

**MEMORANDUM OF AGREEMENT REGARDING COLLABORATION ON THE
PLANNING, PRELIMINARY DESIGN AND ENVIRONMENTAL COMPLIANCE
FOR THE DELTA HABITAT CONSERVATION AND CONVEYANCE
PROGRAM IN CONNECTION WITH THE DEVELOPMENT OF THE BAY
DELTA CONSERVATION PLAN**

This Memorandum Of Agreement (MOA) establishes a joint process among the California Department of Water Resources (DWR), the U.S. Department of the Interior's Bureau of Reclamation (Reclamation), and certain contractors and representatives of contractors for water from the State Water Project (SWP contractors) and federal Central Valley Project (CVP contractors) listed on the signature page to this MOA (SWP and CVP contractors are sometimes referred to collectively as the Water Agencies). The purpose of this MOA is to enable timely analysis of appropriate habitat conservation and water supply measures, including Delta conveyance options that are developed in the Bay Delta Conservation Planning (BDCP) process. This MOA also addresses certain financial matters related to budgeting, cost sharing, funding sources, and the use of these funds to accomplish the purposes of this MOA. DWR, Reclamation, and the Water Agencies are sometimes referred to herein individually as a "Party" or collectively as "Parties".

RECITALS

- A. On February 28, 2008, Governor Schwarzenegger, in a letter to State Senators Perata, Machado, and Steinberg, stated his intention to direct DWR to proceed under the California Environmental Quality Act (CEQA) to evaluate at least four alternative Delta conveyance strategies in coordination with the BDCP.
- B. The BDCP is a voluntary effort by multiple State and federal resource agencies, water agencies, and other stakeholder groups (Attached as Exhibit 1) to develop a comprehensive Habitat Conservation Plan under the federal Endangered Species Act and Natural Community Conservation Plan under the State Natural Community Conservation Planning Act to better protect at-risk species in a manner that also recognizes the importance of water supply, seismic and flood durability, ecosystem health and resilience, water quality, schedule, and costs. The BDCP process is guided by principles set forth in the September 2006 Planning Agreement which establishes a Steering Committee, a group of Potentially Regulated Entities, and a decision-making process. DWR, Reclamation, and the Water Agencies are members of the BDCP Steering Committee and are participating in the process to develop the BDCP.
- C. In November 2007, the Steering Committee described in a memorandum entitled "Points of Agreement for Continuing into the Planning Process," (Attached as Exhibit 2) that it will evaluate a full range of potential facility design and operational parameters for Delta water conveyance options to achieve the BDCP conservation and planning objectives over the near and long term.
- D. In 2008, in close collaboration with the BDCP Steering Committee, DWR issued a Notice of Preparation under the CEQA and U.S. Fish and Wildlife Service, National Marine Fisheries Service, and Reclamation issued a Notice of Intent under the National Environmental Policy Act (NEPA) to commence an environmental review process for the BDCP, which will include measures that incorporate options for improving the Delta water conveyance system.
- E. This MOA will support and complement the activities of the Steering Committee by establishing roles and responsibilities that will facilitate the funding and planning for the Delta water conveyance and habitat conservation studies. The Parties will refer to this effort as the "Planning Phase" of the "Delta Habitat Conservation and Conveyance Program" ("DHCCP" or "Program"). DWR, Reclamation, and the Water Agencies intend to enter into separate agreements related to funding the work necessary or providing mechanisms to transfer funds for the planning,

preliminary design, and environmental compliance documents required by CEQA and NEPA.

- F. Accordingly, to accomplish the stated purpose of the MOA, DWR, Reclamation, and the Water Agencies enter into this MOA to facilitate an efficient and cost effective process that will:
- (a) establish a DWR Program Manager and a Reclamation Program Manager for the DHCCP Planning Phase;
 - (b) (b) analyze potential responses to the multiple threats to the State's economic well being posed by the current conveyance system's vulnerability to seismic risk and climate change;
 - (c) facilitate the assessment, planning and environmental analysis of likely conservation measures or elements of the BDCP, particularly the Delta water conveyance options;
 - (d) coordinate and exchange information among the Parties as the BDCP, CEQA and NEPA, and DHCCP Planning Phase moves forward;
 - (e) support a plan that can adapt to the evolving Delta environmental conditions;
 - (f) (f) consider prudent funding of species conservation and improved Delta water conveyance facilities in order to achieve related benefits to water supply, water supply reliability, and ecosystem health and resiliency.

AGREEMENT

NOW THEREFORE, it is mutually agreed by the Parties as follows:

I. Establishment of Delta Habitat Conservation and Conveyance Program Executive Committee, Core Team, and Related Processes.

A. Establishment of a DHCCP Executive Committee.

1. The Parties hereby establish the DHCCP Executive Committee (Executive Committee) comprised of the DWR Director, Reclamation Mid-Pacific Regional Director, Executive Director of the San Luis-Delta Mendota Water Authority, Chief Executive Officer of the Santa Clara Valley Water District, and the General Managers of the Westlands Water District, the Metropolitan Water District of Southern California, the Kern County Water Agency, two additional SWP contractor general managers selected through the State Water Project Contractors Authority (SWPCA), and two additional CVP contractor general managers selected through the San Luis-Delta Mendota Water Authority, at least one of which shall be a manager from a member agency of the SLDMWA.
2. The Executive Committee will meet periodically as needed to carry out the activities described below, but at least quarterly. The Executive Committee will prepare and maintain minutes of its meetings.
3. The Executive Committee will be provided a detailed update by Program Managers on the status of activities described in this MOA.
4. The Executive Committee members will provide information and individual advice on the DHCCP Planning Phase, including:
 - a. progress on meeting DHCCP Planning Phase goals and objectives;
 - b. progress in implementing the actions undertaken pursuant to this MOA and resolving any issues related to these actions; and
 - c. measures that may be implemented in the event insufficient progress is being made in completing the DHCCP Planning Phase, or any element thereof.

(Who don't attend the Ex Comm mtg)

5. The Executive Committee members will provide direction and oversight regarding activities that should be undertaken by their representatives on the DHCCP Core Team established below in Section I.B.
6. Any disputes over any of the activities discussed in this MOA shall be resolved by the DWR Director and Reclamation Regional Director as expeditiously as possible, after consultation with other members of the Executive Committee.
7. Each Party represented on the Executive Committee will act under its independent authority and any determinations or decisions made as a participant on the Executive Committee will be an independent determination or decision, including any determinations or decisions required by CEQA or NEPA. As limited by the foregoing, the Parties will not be obligated to accept or be bound by any determinations or decisions made by other Parties represented on the Executive Committee.

B. Establishment of DHCCP Core Team.

1. The Parties will establish a DHCCP Core Team (Team) that will provide individual advice regarding the direction and coordination of DHCCP activities, including the planning, financing, environmental review, permitting, and preliminary design of DHCCP Planning Phase options.
2. The Team will consist of one representative from each member of the Executive Committee. A member may change its designated representative by notifying all other members in writing.

C. Team Meetings.

1. The Team will establish a biweekly schedule for regular meetings to discuss development of activities, assignments, and ongoing work progress. Meetings may be scheduled more frequently at the discretion of the Team. The Team may establish and schedule meetings of subcommittees to coordinate implementation of this MOA and to specifically address technical, legal, and other matters as needed. Attendance at all meetings may be augmented to include staff or consultants to ensure that the appropriate expertise is available to address pertinent issues.

2. The Team will meet at least quarterly with the Executive Committee, and more frequently when needed, to provide status updates and discuss matters covered in this MOA.
3. Advance notice of Team meetings and agendas will be provided to the Team members and to the Executive Committee members. Notice will be by electronic mail unless notice by mail is requested.
4. The Team will attempt to provide meeting materials in advance of the scheduled meetings to provide Team members and the Executive Committee members with sufficient notice and information to facilitate meaningful participation.
5. Team shall establish a financial management and review coordinating committee that will meet monthly and report to the Team. The purpose of the Committee is to assist the Team in monitoring and managing invoicing, payments, cash flow, and other financial matters as directed by the Team, which are related to the DHCCP Planning Process.

D. Team Activities.

1. The Team members will provide individual advice on specific issues related to implementation of this MOA. The Team will work cooperatively and in an integrated manner with the Program Managers.
2. The Team will provide technical assistance and expertise on the DHCCP Planning Phase.
3. The Team will develop a process to facilitate communication, schedule meetings, distribute information, and other organizational requirements that will help to meet the objectives of this MOA.
 - a. The Parties will share all relevant DHCCP Planning Phase information with the Team in a timely manner.
 - b. The Team may meet with other interested stakeholders or groups, such as the BDCP PRE Committee, the SWC-CVP Water Contractor's Coordination Group, the BDCP Public

Outreach Planning and Scheduling Group, and the BDCP Working Groups, to:

- i. coordinate activities;
- ii. facilitate efficient and effective use of resources and staff; and
- iii. provide consistency with related efforts, such as the BDCP, Delta Vision, and Delta Risk Management Strategy.

II. Roles and Responsibilities of the Parties.

- A. The Parties will work jointly to meet the objectives of this MOA.
- B. The Parties will coordinate all activities related to fulfillment of the objectives of this MOA. The Parties shall cooperate with one another and work as efficiently and effectively as possible in the pursuit of all activities and decisions described in this MOA and those that are not particularly described but which are related to or arise out of the activities that are described.
- C. As requested by the Program Managers, each of the Parties will provide expertise, guidance, and data on those matters for which it has specific expertise or authority, as needed to carry out the work of the Team and meet the objectives of this MOA. DWR and Reclamation will provide actual direction to the Program Managers and consultants, consistent with this MOA.
- D. After execution of this MOA, the Team shall create an Exhibit to this MOA that describes the anticipated tasks to be performed hereunder and a schedule for performance of said tasks. (Exhibit 3 is a placeholder for the Program Tasks and Schedule.) It is recognized that refinement of the tasks and the schedule will be necessary to conform to developing information, permitting and other requirements. Therefore, Exhibit 3 may be revised from time to time upon agreement of the Parties without constituting an amendment to this MOA.
- E. DWR has designated a Program Manager and its representative on the Team. Reclamation will designate a Program Manager and its representative on the Team. The Water Agencies' Executive Committee members will each designate a representative to serve on the Team. All Team members will work collaboratively to meet the purpose of this MOA.
- F. The Parties will ensure that staffing is available to carry out the Program and to assist the Program Managers.

- G. Through the State contracting process, DWR, in collaboration with the other Parties, has retained a consultant with program management experience to assist the Parties in meeting the objectives of the DHCCP Planning Phase and this MOA and in carrying out the activities determined through the BDCP and permitting processes. DWR, in collaboration with the other Parties, may retain other consulting services as necessary to ensure the timely completion of the tasks necessary in these efforts.
- H. DWR, in collaboration with the other Parties, has retained an environmental consultant to prepare necessary documents under CEQA and NEPA. DWR will act as lead agency under the CEQA and Reclamation will act as one of the lead agencies under NEPA. The Parties will coordinate during the preparation of the CEQA and NEPA documents. However, DWR and Reclamation will each remain responsible for making the final decisions regarding their respective environmental documents, as required by Public Resources Code Sections 21100 and 21108; California Code of Regulations, Title 14, Sections 15025, 15089, 15090; and the National Environmental Policy Act (NEPA), Title 42 of the United States Code, section 4321 et seq., and in accordance with Federal NEPA regulations (40 C.F.R. § Chapter V).
- I. The Parties will provide support and leadership to the Executive Committee and Team by contributing staff time, information, and facilities within available resources

III. Program Funding.

- A. Funding pursuant to this MOA addresses only the planning, preliminary design, and environmental compliance actions that do not involve irrevocable commitments of funds for construction or other implementation of the Program. This set of actions is referred to as the "Planning Phase" of the DHCCP. If the Parties determine to proceed with actions beyond the Planning Phase, including the implementation and construction phases of the DHCCP, the Parties may enter into supplemental funding agreements.
- B. DWR has developed an estimated DHCCP Planning Phase Budget with specific DHCCP Planning Phase elements and will work collaboratively with all of the Parties to develop revisions to the budget. Additionally, Reclamation has developed an estimated budget for participating on the tasks of the DHCCP Planning Phase that are consistent with Reclamation's general planning authority. The total cost for the Planning Phase of the Program is currently estimated by DWR at \$140 million. A copy of the initial budget is attached hereto as Exhibit 4. No DHCCP Planning Phase task order shall exceed Ten Million Dollars.

- C. The Program Managers and the Executive Committee will discuss sources of funds, commitments, obligations, encumbrances, expenditures, projected expenditures to completion, and a comparison of actual to budgeted expenditures no less than once every quarter and whenever actual expenditures for any DHCCP Planning Phase element exceed 80 percent of the budgeted amount for that element.
- D. After the execution of this MOA, before any work is commenced on a DHCCP Planning Phase task order, DWR and Reclamation shall consult with the other members of the Executive Committee, and in the event any member of the Executive Committee objects to a DHCCP Planning Phase task order proceeding, the Executive Committee shall meet on the first date convenient to its members, but not later than 14 days after the expression of the objection, to attempt to resolve the objecting member's concerns. DHCCP Planning Phase budgets for successive fiscal years will be coordinated among the Parties as appropriate.
- E. Participating SWP contractors and CVP contractors have agreed among themselves that the costs of the DHCCP Planning Phase should be shared initially on an equal 50-50 basis. Additionally, participating SWP and CVP contractors have agreed that in-kind services provided by Reclamation will be credited toward the participating CVP contractors' 50 percent contribution. Any funds provided to DWR via a financial assistance agreement with Reclamation will also be credited towards the CVP contractors' portion of the DHCCP Planning Phase costs.
- Upon completion of the Planning Phase, and if the DHCCP proceeds to implementation, a mechanism shall be established between SWP and CVP contractors, or other appropriate entities, and DWR for reapportionment of DHCCP Planning Phase costs based on calculated benefits of the implemented and/or constructed DHCCP conservation measures to each Project. Any funds or in-kind services provided by Reclamation during the DHCCP planning phase are considered sunk costs and are not available for reapportionment as described above.
- F. DWR will sign separate funding agreements with the participating CVP contractors and a financial assistance agreement with Reclamation. DWR will also sign separate funding agreements with SWP contractors that are willing to advance funds for DHCCP Planning Phase costs through billing procedures based upon the Water Supply contracts. The separate funding agreements for both the SWP and CVP contractors will allow contractors to withdraw from this MOA and the separate funding agreement under specified conditions.

- G. Reclamation may sign separate agreement(s) with participating CVP contractors to contribute funds for the DHCCP Planning Phase.
- H. In the event a Water Agency withdraws from this MOA pursuant to Section IV, that Water Agency shall not be responsible for the cost of any DHCCP Planning Phase task orders that are subsequently approved by DWR or that were approved by DWR less than 60 days prior to the date the notice of withdrawal was transmitted to DWR pursuant to Section IV.A. The withdrawal of one or more Parties shall not impair the authority of the remaining Water Agencies to continue with the implementation of this MOA. However, the withdrawn Water Agencies shall remain responsible for the costs of completing any DHCCP Planning Phase task order approved prior to the dates set forth above. Any funding agreement entered into in conjunction with this MOA will include such terms and conditions necessary to effectuate the intent of this provision and the provisions of Section IV.B.
- H. If additional funds from non-parties become available and are appropriated for any action in furtherance of the BDCP, the Parties will determine how the additional money will affect the shared cost allocations and/or contributions by the Parties in the separate funding agreements.

IV. Withdrawal, Substitution and Termination.

- A. Subject to any restrictions established by any DHCCP Planning Phase funding agreement, any Party may withdraw from this MOU upon 30 days written notice to the other Parties. If a Party intends to withdraw it shall, coincident with the providing of notice to the other Parties, provide a detailed written explanation to the other Parties explaining why the Party intends to withdraw.
- B. If DWR withdraws from this MOA, it shall terminate. If Reclamation or any of the Water Agencies withdraw from the MOA, the remaining Parties shall notify DWR within seven days of the effective date of the withdrawal as to whether they intend to continue operating under this MOA. Failure to provide such notice shall be deemed an agreement to continue as a Party to this MOA. In the event of termination, the Parties' liability for reasonable termination costs shall be set forth in the separate funding agreements. In the event of withdrawal by one or more of the Water Agencies, liability for costs incurred in fulfillment of the DHCCP or the objectives of this MOA shall be set forth in the separate funding agreements, in accordance with Section III.H of this MOA. In the event of withdrawal by Reclamation, liability for costs incurred in fulfillment of the

DHCCP or the objectives of this MOA shall be set forth in the financial assistance agreement.

- C. If the Water Agencies become members of a Joint Powers Authority (JPA) which includes among its purposes collaboration on the analysis, development, and implementation of appropriate habitat conservation measures, including Delta Conveyance options, in coordination with the development of the BDCP, the JPA shall execute this MOA and thereafter become the "Water Agencies" for the purposes of this MOA. The JPA will thereafter be responsible for selecting the Water Agencies' representatives on the Executive Committee, the number of which shall remain unchanged. If the JPA assumes the role of the Water Agencies, withdrawal from this MOA by the Water Agencies shall only occur through notice from the JPA and such notice shall cause this MOA to terminate.

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V. Miscellaneous Provisions.

- A. This MOA may be modified by written agreement of all of the Parties.
- B. No Delegation of Authorities.
1. The purpose of this MOA is to establish an agreed-upon cooperative process to provide planning, preliminary design and environmental compliance regarding conservation measures and Delta conveyance options in coordination with the BDCP process.
 2. Nothing in this MOU constitutes a delegation by any Party of its existing authority to make any decision it is mandated by law to make, including:
 - a. Making a final determination or commitment, that it is mandated to make independently by CEQA or NEPA,
 - b. Making any other final decision on a project,
 - c. Complying with a court order or regulatory order, or
 - d. Pursuing a project according to individual legal authority.
 3. Nothing in this MOA shall amend, abridge, or in any way alter the legal responsibilities or authorities of the Parties. Nothing in the MOA shall amend, abridge, or modify any provisions of the Water Supply Contracts between the DWR and any of its SWP contractors or the water supply contracts between Reclamation and any of its CVP contractors.

4. All provisions of this MOA are intended and will be interpreted to be consistent with all applicable provisions of State and federal law. The undersigned recognize that public agencies signatories to this MOA have specific statutory and regulatory authority and responsibilities, and that actions of these public agencies must be consistent with applicable procedural and substantive requirements of State and federal law. Nothing in this MOA is intended to, nor will have the effect of, constraining or limiting any public entity in carrying out its statutory responsibilities. Nothing in this MOA constitutes an admission by any party as to the proper interpretation of any provision of law, nor is anything in the MOA intended to, nor will it have the effect of, waiving or limiting any public entity's rights and remedies under any applicable law.
 5. Execution of this MOA does not constitute a waiver by any signatory of any right or remedy it may have, nor does execution constitute pre-approval or any project or preferred project alternative, or waive or otherwise abridge responsible trustee duties required, or discretion authorized, under State and federal law.
- C. The expenditure of any money or the performance of any obligation of the United States under this MOA shall be contingent upon appropriation or allotment of funds. No liability shall accrue to the United States for failure to perform any obligation under this MOA in the event that funds are not appropriated or allotted.
- D. This MOA shall become effective upon signature and date of the Parties listed below and upon the execution of the funding agreements referenced in Section III above.
- E. The Parties may execute this MOA in multiple originals each of which will be deemed to be an original official copy, or counterpart.